

Safety Department
9523 Florida Mining Boulevard
Jacksonville, FL 32257
904 262-4285
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7-27-96

FHWA DOCKET NO. MC-96-18
FEDERAL HIGHWAY ADMINISTRATION
OFFICE OF CHIEF COUNCIL
ICC-10, ROOM 4232
400 SEVENTH ST., S.W.
WASHINGTON, D.C. 20590

QA-20670

96 JUL 1 17:19
LEGS./REGS. DIV.

FEDERAL
ADMINISTRATION

COMMENTS:

FHWA-97-2299-51

1. THE EXISTING RATING SYSTEM SHOULD BE ELIMINATED. YOU EITHER HAVE A SATISFACTORY OR UN-RATED CARRIER CLASS. THIS WOULD FORCE THE FHWA TO INSPECT CARRIERS THAT HAVE NO RATING. I HAVE BEEN TOLD BY A FHWA REGIONAL OFFICIAL AT A ROUND TABLE MEETING THAT THEY CONCENTRATE ON CARRIERS WHO HAVE BEEN RATED, AND LARGE WELL RUN CARRIERS, BECAUSE THEY GET EXCELLENT CO-OPERATION. FHWA WILL DENY THIS, BUT HOW CAN MANY INDEPENDENT TRUCKERS CONTINUE TO OPERATE WITH OUT A RATING. THIS WAS EXPLAINED BY SAYING THEY DO NOT HAVE RECORDS. WELL WE HAVE TO KEEP RECORDS, AND IF WE DO NOT A FINE IS LEVIED AGAINST US. LETS ALL PLAY ON THE SAME FIELD, WITH THE SAME RULES, NOTIFY THE SMALL ONES TO PRODUCE THE RECORDS, IF THEY DO NOT PROVED THE NECESSARY RECORDS, TAKE THEIR OPERATING AUTHORITY AWAY.
2. UN-RATED
3. PERFORMANCE SHOULD BE THE CRITERIA FOR BASING AN AUDIT. DRIVER COMPLAINTS SHOULD NOT BE A BASIS FOR AN AUDIT BECAUSE MOST COMPLAINTS COME FROM TERMINATED EMPLOYEE'S. DUE TO THE ANTI-TRUCKING CLIMATE THAT PREVAILS IN THE COUNTRY (CRASH) (AAA) CITIZEN COMPLAINTS SHOULD BE TAKEN AN EVALUATED BEFORE ANY ACTION IS TAKEN. THEN WHEN AN AUDIT TAKES PLACE IT SHOULD ONLY ADDRESS THE ITEM IN THE COMPLAINT. THE COMPANY SHOULD BE NOTIFIED AT THE TIME OF THE AUDIT WHAT THE COMPLAINT WAS ABOUT, AND IF IT WAS AN EMPLOYEE OR A COMPLAINT FROM THE PUBLIC.
4. THIS IS A TOUGH ISSUE, AND I WOULD LIKE TO SEE SOME SEPARATION, BUT IN SOME CASES ENFORCEMENT MAY BE THE ONLY ANSWER TO GET A CARRIER TO COMPLY WITH THE REGULATIONS. FHWA MAY WANT TO CONSIDER THE FIRST INSPECTION AS A COMPLIANCE INSPECTION WITH NO ENFORCEMENT ACTION, AND GIVE THE CARRIER A PERIOD OF TIME TO CORRECT THE VIOLATIONS. RE INSPECTION THEN WOULD GENERATE AN ENFORCEMENT ACTION.

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5. CARRIERS THAT GO ABOVE AND BEYOND THE EXTRA SHOULD BE AWARDED POINTS TO OFF SET ANY ENFORCEMENT ACTION THAT MAY BE TAKEN BY THE FHWA.

6. PERFORMANCE IS IN MY OPINION THE BEST STANDARD TO DETERMINE IF A COMPANY SHOULD RECEIVE AN AUDIT. THIS FORCES A COMPANY TO MAINTAIN ITS FLEET, TRAIN AND RETRAIN ITS DRIVERS, EVALUATE ITS MAINTENANCE DEPARTMENT, AND SAFETY DEPARTMENT EACH MONTH BY REVIEWING THE ROAD SIDE INSPECTIONS COMPLETED BY STATE, FEDERAL, AND LOCAL ENFORCEMENT OFFICERS. I FEEL THAT ACCIDENTS SHOULD BE A PART OF THIS PROCESS, BUT ONLY AT FAULT ACCIDENTS CHARGED TO THE COMPANY. THIS CAN BE ACCOMPLISHED BY HAVING LAW ENFORCEMENT REPORTS REVIEWED BY FHWA. ACCIDENTS PER MILLION MILES IS NOT A GOOD CRITERIA, BECAUSE A COMPANY THAT OPERATES IN THE NORTHEAST IS SUBJECTED TO HEAVY TRAFFIC, AND LOW MILES, WHERE A COMPANY THAT OPERATES IN THE MIDWEST, AND FAR WEST IS SUBJECTED TO LESS TRAFFIC AND MORE MILES, AND WOULD HAVE A LOWER ACCIDENT PER MILE RATIO. SEVERITY OF ACCIDENTS SHOULD BE ELIMINATED BECAUSE IT HAS NO USEFUL PURPOSE. WITH TODAY'S ESCALATING COST OF REPAIRS THE \$ 4,400 NOW BEING USED IS TOO LOW, AND IS ARBITRARY IN NATURE.

7. RATINGS SHOULD BE BASED ON THE OVERALL CARRIER PERFORMANCE.

8. THIS AREA IS OF GREAT CONCERN TO THIS COMPANY. A STANDARD MUST BE DEVELOPED TO DETERMINE PREVENTABLE VS NON-PREVENTABLE ACCIDENT DETERMINATION. ONCE AN AUDITOR DETERMINES AN ACCIDENT IS CHARGEABLE TO A COMPANY THEY WILL NOT CHANGE IT, AND NEITHER WILL THE STATE FHWA OFFICER IN CHARGE, AND NEITHER WILL THE REGIONAL, OR NATIONAL. I HAVE HAD FIRST HAND KNOWLEDGE OF THIS AND WHEN YOU ARE HIT HEAD ON BY ANOTHER AUTO, WHEN YOU ARE IN YOUR LANE, AND IT IS CHARGED AGAINST YOU THIS DOES NOT MAKE ANY SENSE. THIS IS ONE OF SEVERAL LIKE THIS. THERE IS ALWAYS GOING TO BE DISAGREEMENT ABOUT WHAT IS A PREVENTABLE, AND A NON-PREVENTABLE ACCIDENT. BUT I BELIEVE THE TRUCKING INDUSTRY CAN MAKE THIS DETERMINATION, AND FORWARD TO FHWA A RECOMMENDATION AS TO WHAT A PREVENTABLE VS NON-PREVENTABLE ACCIDENT IS. I DO NOT THINK ANY OTHER AGENCY SHOULD BE INVOLVED IN THIS DECISION AS WE ARE THE ONES WHO HAVE TO LIVE WITH THE OUTCOME. ALL TOO OFTEN OTHERS MAKE THESE DECISIONS THAT ARE NOT INVOLVED IN THIS INDUSTRY, OR AT LEAST THEY HAVE THE GREATER WEIGHT IN THE DECISION MAKING PROCESS.

COMPLIANCE OFFICERS THAT ARE NOT CONSISTENT NATIONWIDE SHOULD BE RETRAINED. FHWA COMPLIANCE OFFICERS SHOULD HAND OUT TO THE COMPANY BEING AUDITED WHAT IS A THEIR DEFINITION OF A PREVENTABLE/RECORDABLE ACCIDENT BEFORE THE AUDIT STARTS. ALL ACCIDENT REVIEWS SHOULD BE DONE WITH A COMPANY OFFICIAL AND BEFORE A DECISION IS MADE BOTH SHOULD BE IN AGREEMENT AS TO EITHER CHARGEABLE OR NOT CHARGEABLE TO THE COMPANY.

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9. ONLY AN ACCIDENT THAT IS CLEARLY THE FAULT OF THE COMPANY. MANY ACCIDENTS ARE CONSIDERED TO BE BOTH PARTY'S FAULT. YET THE TRUCKING COMPANY IS CHARGED WITH THE AT FAULT BY FHWA, WHAT RELIEVES THE OTHER PARTY OF THE FAULT, HOW CAN FHWA MAKE THIS DETERMINATION. MAYBE THERE SHOULD BE A DEGREE OF FAULT PUT INTO THE RATING SYSTEM.

10. THE TOW-A-WAY CRITERION SHOULD BE ELIMINATED IMMEDIATELY. HOW AND WHY THIS UNFAIR JUDGMENT OF A RE-RECORDABLE ACCIDENT WAS EVER DETERMINED IS BEYOND ME. WHAT HAS A WRECKER GOT TO DO WITH A RECORDABLE ACCIDENT. VEHICLES HAVE BEEN TOWED BECAUSE THE DRIVER WAS TOO UPSET TO DRIVE, NO INJURIES, NO DAMAGE OVER \$4,400 DOLLARS, ONLY A WRECKER CALLED BECAUSE A PERSON WAS TOO UPSET TO DRIVE, AND THIS IS CONSIDERED RECORDABLE.

11. FHWA DOES NOT USE THE NATIONAL AVERAGE, THEY MODIFIED THE AVERAGE DOWN, FROM THE REPORTED AVERAGE. ADJUSTMENTS HAVE TO BE MADE TO TAKE INTO ACCOUNT THE OPERATION OF TRUCKS IN HIGH VOLUME TRAFFIC CONDITIONS IN LARGE CITIES, AND THE EAST COAST. A TRUCK OPERATING IN THE NORTHEAST ARE SUBJECTED TO MORE ACCIDENT SITUATIONS, THAN A TRUCK OPERATING IN THE MIDWEST, SOUTHWEST, AND IN THE FAR WEST. A TASK FORCE OF TRUCKING REPRESENTATIVES CONSISTING OF (SAFETY DIRECTORS), AND FHWA OFFICIALS TO DETERMINE THIS AVERAGE. REGARDLESS, IF THE NATIONAL AVERAGE IS TO BE USED THEN USE THAT AVERAGE WITHOUT ANY MODIFICATION.

12. UNTIL YOU SETTLE WHAT IS A PREVENTABLE/NON-PREVENTABLE; RECORDABLE/NON-RE-RECORDABLE ACCIDENT NO WEIGHT SHOULD BE PLACED IN THIS AREA. IF FHWA COMPLIANCE OFFICERS CAN NOT AGREE WHAT IS A CHARGEABLE/NON-CHARGEABLE, PREVENTABLE/NON-PREVENTABLE ACCIDENT THEN HOW CAN THE INDUSTRY BE JUDGED FAIRLY, MUCH LESS A COMPANY THAT IS GOING THROUGH AN AUDIT. HOURS OF SERVICE VIOLATIONS HAVE BEEN AROUND FOR A LONG TIME, AND THE CURRENT WEIGHT THAT IS ASSIGNED THIS AREA SHOULD REMAIN AS IS.

13. FHWA SHOULD REALIZE THAT THEY HAVE A PROBLEM IN THIS AREA. UNTIL THEY DO, AND I FEEL THEY DO NOT, NO ACTION WILL BE TAKEN. RETRAIN THEIR COMPLIANCE OFFICERS, SUSPEND, TERMINATE, AND ABOVE ALL TRAIN THEM PROPERLY BEFORE THEY GET OUT IN THE FIELD. A NEUTRAL GROUP OF PEOPLE SHOULD BE FORMED TO LISTEN TO THE INDUSTRY, AND EVALUATE THE COMPLAINTS. THE INCIDENTS THAT HAPPENED IN THE MIDWEST SHOULD NEVER HAVE BEEN ALLOWED TO OCCUR BY FHWA.

14. EXPLAINED ABOVE.

15. I UNDERSTAND THIS PROCESS IS UNDER WAY. I WOULD REQUEST THAT THE INDUSTRY BE REPRESENTED IN AN OVERVIEW BEFORE THE CHANGES A PUBLISHED.

16. LOGS SHOULD BE SELECTED ON A RANDOM BASIS, AND A FINDING MADE FROM THAT NUMBER.

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17. I BELIEVE THAT THIRD PARTIES SHOULD BE INVESTIGATED. HOURS OF SERVICE VIOLATIONS ARE MANY TIMES A DIRECT RESULT OF A THIRD PARTY REQUIREMENT THAT DRIVERS UNLOAD FREIGHT, TAKE FREIGHT FROM ONE PALLET AND PUT ON ANOTHER PALLET. TRUCK DRIVERS ARE USED AS WAREHOUSE MEN, AND THIS REDUCES THE HOURS A DRIVER CAN DRIVE. THIS IS AN AREA THAT NO ONE WANTS TO GET INVOLVED IN BECAUSE TRUCKING INVOLVES DEALING WITH CUSTOMERS.

18. COMPLAINTS, AN AREA THAT MANY CARRIERS FEEL WE ARE AT THE MERCY OF A TERMINATED DRIVER, OR A DRIVER WITH AN AX TO GRIND, OR A GROUP OF PEOPLE WHO HAVE AN AGENDA AGAINST TRUCKING. NO COMPANY SHOULD BE ACCUSED OF A WRONG UNLESS THE PERSON WHO MAKES THE COMPLAINT IS MADE KNOWN TO THAT COMPANY. THIS GOES AGAINST THE DOCTRINE OF THE ACCUSED BEING FACED WITH THE ACCUSER. FURTHER ANY AUDIT THAT IS GENERATED BY A COMPLAINT AND THE VIOLATIONS THAT ARE SUBSEQUENTLY FOUND, IF ARE THE FAULT OF THE ACCUSER, THAT ACCUSER SHOULD BE FINED, AND NOT THE COMPANY. I ALSO BELIEVE THAT NO RATINGS CHANGE SHOULD TAKE PLACE BECAUSE OF A COMPLAINT AUDIT, AND THAT AUDIT BE LIMITED TO THE COMPLAINT FILED. THE COMPANY SHOULD BE INFORMED OF THE NATURE OF THE COMPLAINT AT THE START OF THE INVESTIGATION. THE COMPANY SHOULD BE ALLOWED TO PRESENT EVIDENCE TO DISPUTE THIS COMPLAINT, AND IF SUCCESSFUL IS PROVING ITS CASE THEN THE INVESTIGATION SHOULD STOP WITH NO FURTHER ACTION BEING TAKEN BY FHWA.

19. IF A DRIVER HAS BEEN DISCIPLINED FOR THE ALLEGED COMPLAINT AND THE COMPANY HAS EXHAUSTED ALL MEANS OF CORRECTING THE PROBLEM, AND THE DRIVER IS SUSPENDED, OR TERMINATED, THEN I BELIEVE THE COMPANY HAS ACTED IN GOOD FAITH, AND SHOULD NOT BE HELD ACCOUNTABLE. AS IT NOW STANDS COMPANIES, TRAIN, RETRAIN, AUDIT, INSPECT, SUSPEND, AND TERMINATE DRIVERS FOR VIOLATIONS OF FEDERAL REGULATIONS, AND THEN GET FINED BY THE FHWA COMPLIANCE OFFICE, AND LOOSE OUR RATINGS AFTER WE HAVE TAKEN CORRECTIVE ACTION. ADD TO THIS THE DRIVER OR DRIVERS WHO CAUSED THIS ACTION TO BE TAKEN ARE NOT HELD ACCOUNTABLE BY THE FHWA. IF A COMPANY DOES THE ABOVE THEN NO ACTION SHOULD BE TAKEN BY THE FHWA. ALL VIOLATIONS OF THE FEDERAL REGULATIONS SHOULD BE DISCARDED IN THIS INSTANCE AND NOT COUNT AGAINST A CARRIERS RATING. IF A CARRIER IS FINED FOR ANY VIOLATION OF THE FEDERAL REGULATIONS, THEN THE DRIVER SHOULD BE FINED ALSO.

20. YES THE DRIVER MUST BE HELD ACCOUNTABLE FOR THE LOG BOOK VIOLATIONS, AS IT IS HIS BOOK. BEING A FEDERAL DOCUMENT IF HE/SHE VIOLATES THE REGULATIONS, THEN HE/SHE HAS VIOLATED A FEDERAL LAW. WHY JUST FINE A COMPANY, IF YOU ARE LOOKING FOR COMPLIANCE FINE A FEW DRIVERS AND SEE THE HOURS OF SERVICE VIOLATIONS DISAPPEAR, AND LOG FALSIFICATIONS GO DOWN. BUT THIS MUST BE DONE AT AN AUDIT, NOT ROAD SIDE INSPECTIONS.

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21. FORM AND MANNER VIOLATIONS ARE USUALLY MISTAKES, AND SHOULD NOT BE HELD AGAINST A DRIVER OR COMPANY. THE FHWA COULD HELP DRIVERS AND COMPANIES BY RELEASING IN A MORE TIMELY MANNER INTERPRETATIONS OF RULINGS MADE BY THE FHWA REGARDING LOGS & HOURS OF SERVICE. I THINK A DRIVER KNOWS WHEN HE DELIBERATELY FALSIFIES A LOG.

22. I WOULD LIKE TO SEE THE FHWA AUDIT, MAKE RECOMMENDATIONS FOR CORRECTION, AND THEN GIVE THE CARRIER A SPECIFIC AMOUNT OF TIME TO CORRECT THE VIOLATIONS. IF THE CARRIER DOES NOT CORRECT THE VIOLATIONS IN THAT TIME, THEN INITIATE AN ENFORCEMENT ACTION AGAINST THAT COMPANY.

23. I HAVE MAJOR PROBLEMS WITH TIME & DATE STAMP RECEIPTS. MANY TOLL PLAZAS STAMP TOLL TICKETS AHEAD OF TIME TO HAND OUT LATER, AND DRIVERS CAN NOT GET CURRENT DATE STAMPED TICKETS. SOME FUELING LOCATIONS FORGET TO CHANGE THE DATE ON THE STAMP METER. I DO NOT KNOW HOW THE FHWA COMPLIANCE OFFICER CAN HOLD EITHER THE COMPANY OR DRIVER ACCOUNTABLE FOR MISTAKES OF OTHERS. AGAIN COMMON SENSE SHOULD COME INTO PLAY HERE, AS THE BOOK IS FOR GUIDANCE, AND IF THE COMPANY IS DOING A GOOD JOB IN OTHER AREAS THEN WHY NOT DISALLOW THESE OBVIOUS ERRORS.

24. ITEM # 22 ADDRESSES THIS ISSUE.

25. THE FINAL APPEAL BETWEEN A COMPANY AND THE FHWA SHOULD BE AN ARBITRATOR. THIS PERSON SHOULD NOT BE PICKED BY THE INDUSTRY OR HAVE ANY TIES WITH THE GOVERNMENT. I DO NOT BELIEVE THE FHWA APPEAL PROCESS IS FAIR, AS YOU ARE ASKING ENFORCEMENT OFFICIALS TO RULE ON CASES MADE BY THEIR SUBORDINATES.

26. I HAVE NOT HAD A PROBLEM WITH THIS, AND CAN OFFER NO SUGGESTIONS.

27. YES, SEE ABOVE.

28. I CAN SEE NO VALUE OF THE PREMIER CARRIER PROGRAM. IF YOU HAVE A SATISFACTORY RATING THEN YOU HAVE A PREMIER CARRIER PROGRAM. MORE PAPERWORK, REGULATIONS, AND ITEMS TO BE CONCERNED ABOUT IS NOT WHAT SHOULD BE HAPPENING. WE CAN NOT STAND ANY MORE RULES AND REGULATIONS NOW. IN FACT I DEVOTE ALMOST ONE THIRD OF MY DAY WORKING ON GOVERNMENT REQUIRED DOCUMENTS. THIS TIME WOULD BE BETTER SPENT REDUCING ACCIDENTS, INJURIES, AND HELPING EDUCATE DRIVERS IN THE VAST REGULATORY LANGUAGE WE NOW HAVE.

29. I CAN NOT FIND ANY RELATIONSHIP OF HOURS OF SERVICE VIOLATIONS & ACCIDENTS. I ANALYZE ALL ACCIDENTS FOR THIS, AND TO DATE DO NOT HAVE ANY I CAN SAY WERE CAUSED BY HOURS OF SERVICE VIOLATIONS.

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IN CLOSING I WANT TO THANK THE FHWA FOR ALLOWING ME TO MAKE COMMENTS. I HOPE THAT AS A REGULATORY AGENCY YOU LISTEN TO THE INDUSTRY, AND PLACE THE CORRECT WEIGHT ON WHAT WE SAY. WE MAY NOT BE AS VISIBLE AS SOME OF OUR ADVERSARIES, BUT WE HAVE ONE GOAL, AND THAT IS TO FURTHER REDUCE ACCIDENTS AND INJURIES IN THIS INDUSTRY. I WOULD LIKE TO POINT OUT THAT WE HAVE REDUCED ACCIDENTS AND INJURIES IN THIS INDUSTRY, AND BY YOUR OWN ACCOUNTING CARS CAUSE MORE TRUCK COLLISIONS THAN TRUCKS DO. I WOULD HOPE THAT YOU WOULD START TO ADDRESS THIS ISSUE WITH OTHERS.

IN THE PAST YOU HAVE REQUESTED THIS INDUSTRIES HELP IN PASSING CERTAIN LEGISLATION, WHICH WE SUPPORTED BECAUSE IT WAS THE RIGHT THING TO DO. WE DID THIS KNOWING IT WAS GOING TO COST THE INDUSTRY HUNDREDS OF THOUSANDS OF DOLLARS. THIS INDUSTRY WILL SUPPORT LEGISLATION THAT IS FAIR, BUT WILL BITTERLY OPPOSE ANY UNFAIR LEGISLATION IN THE FUTURE. I WOULD LIKE TO SEE MORE DISCUSSIONS WITH THE FHWA SENIOR MANAGEMENT AND THE INDUSTRY. BUT I WOULD LIKE TO SEE THE DIRECTORS OF SAFETY AT THESE MEETINGS, AS WE ARE THE ONES IN THE TRENCHES WITH THE COMPLIANCE OFFICERS.

SINCERELY,

MARK DARLING
DIRECTOR OF SAFETY & DRIVER DEVELOPMENT

CC: MS. LANA BATTS, ITCC PRESIDENT
STEVE SILVERMAN, PRESIDENT SILVEREAGLE TRANSPORT
FILE

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